

8-17-2017

State v. Kroeger Appellant's Brief Dckt. 44840

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 44840, 44841 & 44842
Plaintiff-Respondent,)	
)	ADA COUNTY NOS. CR-MD-2013-11741,
v.)	CR-FE-2016-9337 & CR01-16-31785
)	
DANIELLE DAWN KROEGER,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
<hr/>)	

STATEMENT OF THE CASE

Nature of the Case

Ms. Kroeger raises two issues in his consolidated appeal. First, in her possession cases, she challenges the district court’s decision to retain jurisdiction and impose unified sentences of seven years, with two and three years fixed, respectively. Second, she challenges the district court’s decision to revoke her probation, impose her underlying sentence, and retain jurisdiction in the DUI case.

Statement of Facts and Course of Proceedings

Ms. Kroeger pled guilty to felony driving under the influence, I.C. § 18-8004C, in Ada County Case No. CR-MD-2013-11741 (“the DUI case”). (R., p.55.) The district court sentenced her to a unified term of five years, with two years fixed, suspended her sentence, and placed her on probation. (R., pp.56–57.)

A year and a half later, the State alleged that Ms. Kroeger violated her probation by possessing a controlled substance, committing injury to child, drinking alcohol, using a controlled substance, and failing to maintain a full-time job. (R., pp.82–75.) The State also filed Ada County Case No. CR-FE-2016-9337 (“the first possession case”), which brought charges arising out of the same conduct as alleged in the probation violation. (R., pp.192–93.) Those charges included possession of a controlled substance, injury to a child, and possession of paraphernalia. (*Id.*)

The district court consolidated the DUI case and the first possession case. (R., p.110.) At a hearing on those two cases, Ms. Kroeger pled guilty to possession of methamphetamine and admitted to violating her probation by possessing methamphetamine. (*See generally* Tr., p.8, L.4–p.22, L.23; R., pp.258–68.) As part of the plea agreement in the first possession case, the State agreed to recommend retained jurisdiction with a unified sentence of seven years, with two years fixed. (Tr., p.6, Ls.18–23.)

When Ms. Kroeger was taken back into custody after being on pretrial release for those cases, officers found methamphetamine in her pocket. (R., p.228, Tr., p.47, Ls.6–17.) The State charged her with possession of a controlled substance in Ada County Case No. CR01-16-31785 (“the second possession case”). The district court later consolidated the second possession case with the other two. (R., p.130.)

In the second possession case, Ms. Kroeger pled guilty to possession of methamphetamine. (Tr., p.38, Ls.1–4, p.46, L.11–p.48, L.4; R., pp.377–86.) The parties suggested that Ms. Kroeger should be screened for drug court, and the State agreed to cap its recommendation to a retained jurisdiction, with a unified sentence of seven years, with two years fixed, to be served concurrently with her other sentences. (Tr., p.38, Ls.4–8.)

At sentencing, the State asked that the court revoke Ms. Kroeger’s probation and impose her underlying sentence in the DUI case. (Tr., p.57, Ls.18–20.) As for the sentences in the two new cases, the State suggested, consistent with the plea agreement, that the court impose sentences of seven years total, with two years fixed. (Tr., p.57, L.21–p.58, L.3.) With respect to all three cases, the State recommended that the court retain jurisdiction, and that Ms. Kroeger serve her sentences concurrently. (Tr., p.57, Ls.16–18, p.58, Ls.2–3.) Defense counsel, on the other hand, asked that the court place Ms. Kroeger on probation so that she could participate in drug court and develop the tools she needs to overcome her addictions. (Tr., p.69, Ls.11–24.)

In the DUI case, the district court revoked Ms. Kroeger’s probation and imposed the original unified sentence of five years, with two years fixed. (Tr., p.80, Ls.8–13; R., pp.143–44.) In the first possession case, the court sentenced Ms. Kroeger to total of seven years, with two years fixed. (Tr., p.80, Ls.16–22; R., pp.290–92.) In the second possession case, the court sentenced Ms. Kroeger to a total of seven years, with three years fixed. (Tr., p.81, Ls.7–13; R., pp.402–04.) The court ran all sentences concurrently, and retained jurisdiction in all three cases. (Tr., p.80, L.23–p.81, L.17, p.84, Ls.17–22.) Ms. Kroeger timely appealed. (R., pp.166–68, 315–17, R., pp.427–29.)

ISSUES

- I. Did the district court abuse its discretion when, in the possession cases, it retained jurisdiction and sentenced Ms. Kroeger to unified terms of seven years, with two and three years fixed, respectively?
- II. Did the district court abuse its discretion when it revoked Ms. Kroeger's probation and retained jurisdiction in the DUI case, rather than continuing her on probation so that she could participate in drug court?

ARGUMENT

I.

The District Court Abused Its Discretion When, In The Possession Cases, It Retained Jurisdiction And Sentenced Ms. Kroeger To Unified Terms Of Seven Years, With Two And Three Years Fixed, Respectively

When a defendant challenges her sentence as excessively harsh, this Court will conduct an independent review of the record, taking into account “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decision for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *Miller*, 151 Idaho at 834. Ms. Kroeger’s sentence is excessive in light of the mitigating evidence in this case.

First, the district court abused its discretion by imposing unified terms of seven years, with two and three years fixed, respectively. Of particular import in this case is the way in which Ms. Kroeger’s horrific upbringing relates to her addictions, and how her addictions have in turn led to these crimes. Ms. Kroeger has a history of alcoholism and drug addiction in her family,

including both of her parents, grandmother, aunts, and uncles. (PSI, p.110.) Her mother became addicted to cocaine when Ms. Kroeger was seven or eight years old, after which they lived with various men who would provide her mom with drugs. (PSI, p.6.) As a child, she sometimes saw her mother's friends using cocaine and having orgies. (PSI, p.174.) She said "pills coke and pot at 12, was part of my daily life." (PSI, p.175.) Ms. Kroeger did not always have food to eat, and she spent a lot of time at a friend's house to avoid the troubles she faced at home. (PSI, pp.173–74.)

Ms. Kroeger distinctly remembers one day when her mother was in the bathroom and never came out. (PSI, p.175.) Ms. Kroeger called 911 and then watched as paramedics resuscitated her mother. (*Id.*) After that, Ms. Kroeger's mother finally got control of her addiction. (PSI, p.6.) But by then, Ms. Kroeger was a teenager and had started drinking. (*Id.*) She went to rehab for the first time when she was just fourteen, and, also for the first time, discussed the sexual abuse that she suffered at the hands of her former step-father when she was four years old. (PSI, pp.6, 122.) He would take her out for "special ice cream," blindfold her, and then force her to perform oral sex on him. (PSI, pp.122, 171.)

This childhood has left an undeniable stamp on Ms. Kroeger's life as an adult—she suffers from depression (PSI, p.10), is addicted to alcohol and cocaine (PSI, p.20), and thinks she would benefit from counseling to help with her negative thinking and perceptions (PSI, p.11). Despite her troubled background and her addictions, Ms. Kroeger graduated from high school (PSI, p.170), and had an exceptional work history until just recently (PSI, p.9). Her last jobs were working for Macy's as a sales specialist and in the pharmacy department at Albertson's general office. (*Id.*) Before that, she had a successful seven-year career with Omnicell, a

healthcare products company. (PSI, p.9.) She has job experience in database administration, project management, and process improvement. (*Id.*)

The most important things to Ms. Kroeger going forward are maintaining her sobriety, being financially successful, and being a good mom. (PSI, p.12.) As an important step in reaching those goals, Ms. Kroeger's has taken accountability for her actions. She told the court at sentencing: "I'm here today, you know, to take ownership. I want to take ownership of the things that I have done. The decisions that I made. I want to offer my apology to everyone that my addictions have impacted; specifically my children. I never did I ever intend to affect them directly." (Tr., p.76, L.24–p.77, L.4.) Further, she has a plan for her recovery, including once again becoming involved in AA. (PSI, p.12.) Finally, she has the support of friends and family to help keep her on track. (PSI, pp.122–26 (letters from Ms. Kroeger's mother and step-father), 242 (letter from an AA member), 243 (letter from a friend).) Ms. Kroeger now has a good relationship with her mother, who is still sober, and the stepfather that came into her life when she was ten. (PSI, p.6.)

Considering Ms. Kroeger's background, and especially the severity of her addiction as it relates to her upbringing, the district court abused its discretion by sentencing her to unified terms of seven years, with two and three years fixed, respectively, in the possession cases.

Second, the district court abused its discretion by retaining jurisdiction instead of placing Ms. Kroeger on probation so that she could participate in drug court. With the help of drug court, Ms. Kroeger would have the tools, resources, and support necessary to be successful on probation. This is especially true given that she tends to relapse when facing obstacles in her personal life. (PSI, p.11; *see also* R., pp.172–210.) Drug court, unlike a rider, would give her the structure she needs to learn how to navigate her recovery in the real world.

Fortunately, Ms. Kroeger has both a realistic grasp of the severity of her addictions and a determination to beat those addictions. She shared some of her failures, insights, and goals with the court at the disposition and sentencing hearing:

I've had a chance to reflect over my life in its entirety, but specifically over the last 12 months of my life and what's going on.

I regret that I have violated my probation and I picked up new charges. These decisions that I made that have kept me in jail and they have kept me away from my children and being a productive member of the society here in Boise, along with my A.A. community, is something that I'm hoping to reclaim and repair and restructure and rebuild.

My life has been controlled by addictive behaviors for most of it. I've never really felt that I was whole until I found sobriety in 2013. I found that alcohol had been a part of my life that had fueled my choices, my relationships and it actually made me someone that I didn't really ever want to be and not who I truly am at heart. It took parenting away from me and relationships from my family and most specifically it took away the confidence I had in myself.

So once I got sober I was able to surrender [sic] to alcohol, I found a newfound freedom.

In December 2016, I felt it was at the highest point in my life. I had just turned 40. I was sober. I had my health. It had been restored once again I was at peace. But I found that if I let that fall too short, that so easily the addictions would find me again and I get back to those destructive thoughts and behaviors, which reopen voids that I was seeking to fill with alcohol and that I now turned to drugs for.

Everything that I learned in Alcoholics Anonymous and the 12-step program that I followed for over two years, I just—I put them out of reach. I began to isolate. I pushed away my sponsor. I pushed my friends, who today have joined here in the courtroom to support me. I regret that. I had found something that I'd never had in my life and that was a peace within me.

My addictions are severe. I have more than one. I feel that, you know, I've been able to reflect on my events, my choices, how I failed. I recognize what I should've done differently. And, unfortunately, for me addiction comes in many shapes and forms. You know, it's been drugs and that life-style.

....

I'd like to ask that, judge, you give me the opportunity to rebuild the foundation and sobriety utilizing the Drug Court program. I don't know a lot about the program, but what I do know is that I believe it will provide me with tools to live in this community, face challenges that I face in my daily life and learn how to do it without having to turn to alcohol or drugs.

The structure that I've been told about, the programming, the accountability, the commitment, the honesty that's expected, I believe this is a way for me to start my life. I want my sober life back again. I'm ready to be honest, I'm ready to work on areas that I didn't work on previously, and I believe

this could be an integral part in my sobriety and my future. I want sobriety. I want to prove that I'm committed to achieving these goals for myself, my children and for everyone in this court.

In closing I want to just acknowledge today that there's been a lot of people that have been there for me that I seek support from these months that have been so difficult. I've learned that in order for me to grow and heal, I have to open up to others. That's my biggest character deficit. I don't like to show that I am weak. I try to . . . show that I have no flaws, that I am made of steel—for lack of better words—and that's something that I've been able to do over these past four months and incarcerated and as well as just learning about myself.

I have to allow others in to help me because if I don't, then I choose the wrong paths in my life and I can choose the right ones that I have the support and strength. The people that have surrounded me over this difficult time, they've told me that I'm okay. I'm a survivor. It's okay to ask for help. And when I can't do it myself, that someone is there to lean on. I just need to learn how to lean on them.

My hope is that I can utilize my experiences, these lessons that I'm learning daily and the tools that I'm provided in these recovery programs before me to help others that suffer from the debilitating disease of addiction.

I'm an addict. I always have been. I was born that way And I hope for everyone around me, I truly am capable of regaining my life and I want the opportunity to do that.

(Tr., p.75, L.5–p.78, L.25.) To be successful on probation, Ms. Kroeger believes that she needs to stay sober, keep a job, and provide a home for children. (PSI, p.12.)

Ms. Kroeger's possession cases are clearly a product of her addiction, and drug court would provide her with the tools, resources, and support she needs to stay on track while facing the hurdles of everyday life. The district court should have placed her on probation in the possession cases to give her the opportunity to take advantage of drug court.

II.

The District Court Abused Its Discretion When It Revoked Ms. Kroeger's Probation And Retained Jurisdiction In The DUI Case, Rather Than Placing Her On Probation So That She Could Participate In Drug Court

Whether a willful violation of a condition of probation justifies revoking a defendant's probation "is a question addressed to the judge's sound discretion." *State v. Adams*, 115 Idaho

1053, 1054 (Ct. App. 1989). However, “a judge cannot revoke probation arbitrarily.” *Id.* at 1055. “[P]robation may be revoked if the judge reasonably concludes from the defendant’s conduct that probation is not achieving its rehabilitative purpose.” *Id.*

The appellate court “defers to the trial court’s decision unless an abuse of discretion is demonstrated.” *Id.* This Court must consider the entire record, including the defendant’s conduct before and during probation, *State v. Chapman*, 111 Idaho 149, 153–54 (1986), and must take into consideration the four goals of sentencing: the protection of society, deterrence, rehabilitation, and retribution, *State v. Pierce*, 150 Idaho 1, 5–6 (2010).

Ms. Kroeger contends that probation was achieving its rehabilitative purpose and thus the district court abused its discretion by revoking her probation, rather than keeping her on probation so that she could participate in drug court. Her most recent period of sobriety was between when she committed this DUI in 2013 and when she relapsed in 2015 while on probation. (PSI, p.11.) Her probation officer reported that she “performed well” on probation until her relapse. (PSI, p.5.) When Ms. Kroeger finally let her addiction get the best of her, it was because she did not know how to deal with the personal problems in her life. (PSI, p.11.) Although she fully acknowledges that she ultimately gave into her addictions, setbacks are to be expected when a person is battling an addiction that is as severe as Ms. Kroeger’s. And, as discussed above, drug court would give Ms. Kroeger the structure she needs to learn how to navigate her recovery in the real world.

Considering the success that she had before her most recent relapse, the district court abused its discretion by revoking Ms. Kroeger’s probation, imposing her underlying sentence, and retaining jurisdiction in the DUI case.

CONCLUSION

Ms. Kroeger respectfully requests that this Court place her on probation in all three cases so that she can participate in drug court, and that it reduce her sentence in the possession cases as it deems appropriate.

DATED this 17th day of August, 2017.

_____/s/_____
MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of August, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
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